

## Message Text

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11

ACTION SS-30

INFO OCT-01 ISO-00 /031 W

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P R 040855Z MAY 74

FM AMEMBASSY PHNOM PENH

TO SECSTATE WASHDC PRIORITY 6001

INFO CINCPAC HONOLULU HI

C O N F I D E N T I A L PHNOM PENH 6318

EXDIS

DEPARTMENT ALSO PASS SECDEF

E.O. 11652: GDS

TAGS: CB, ATRN, MASS

SUBJ: MEDTC CONTRACT FOR IN-COUNTRY AIR TRAVEL

REF: STATE 085201; PHNOM PENH 3679

1. THE PROPOSED MEDTC CONTRACT WITH SEAAT WOULD BE FOR SERVICES OF FIXED WING AIRCRAFT ONLY SINCE SEAAT DOES NOT AT THIS TIME HAVE HELICOPTERS AT ITS DISPOSAL. SAVINGS ARE PROJECTED TO BE APPROXIMATELY DOLS 22,000 PER YEAR WHICH REPRESENTS ABOUT TEN PERCENT OF THE TOTAL ADMIN AIR SUPPORT COSTS FOR MEDTC.

2. TERMS OF CONTRACT LEAVE NO DOUBT THAT SEAAT OVERALL OPERATION IS NOT DEPENDENT ON MEDTC CONTRACT. TRANSPORT SERVICES SEAAT OFFERING MEDTC ARE ONLY ONE PART OF SEAAT'S ONGOING ACTIVITIES IN COUNTRY.

3. WE HAVE LEARNED THAT SEAAT DOES IN FACT EMPLOY 37 TCN'S AS PART OF THEIR MAINTENANCE CREW, A FACT OF WHICH WE WERE NOT PREVIOUSLY AWARE. THE MAJORITY OF THESE TCN'S HAVE BEEN WITH SEATT SINCE THE COMPANY'S ESTABLISHMENT IN JULY 1973. WE WOULD ARGUE, HOWEVER, THAT THEIR LENGTH OF SERVICE HERE (WHICH ON OCCASION HAS BEEN USED AS A CRITERION) IS NOT THE MOST IMPORTANT FACTOR IN DETERMINING WHETHER THEY ARE COUNTABLE FOR HEADSPACE PURPOSES.

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4. THE IMPORTANT FACTOR, IN OUR VIEW, IS THAT THE CONTRACT WHICH WE

PROPOSE TO ENTER INTO IS STRICTLY A NON-PERSONAL SERVICES TYPE CONTRACT, ONE IN WHICH IT COULD NOT POSSIBLY BE CONSTRUED THAT AN EMPLOYER/EMPLOYEE RELATIONSHIP EXISTS. WE ARE PURCHASING A SERVICE, NOT FROM AN INDIVIDUAL, BUT FROM A COMPANY, OVER WHOM WE HAVE NO AUTHORITY. WE HAVE NO RESPONSIBILITY FOR NOR CONTROL OVER HIRING OR CONTINUED EMPLOYMENT OF ITS PERSONNEL. WE ARE NEITHER INTERESTED IN NOR CONCERNED ABOUT HOW MUCH THE CONTRACTOR IS PAYING HIS PERSONNEL, WHAT THEIR CONDITIONS OF EMPLOYMENT ARE, HOW MANY HOURS THEY WORK, NOR WHAT STANDARDS OF EMPLOYMENT HAVE BEEN SET

WE ARE NOT PROVIDING THE EQUIPMENT OR THE FACILITIES FOR CARRYING OUT THE SERVICES.

5. WE ARE AWARE THAT SECTION 656 OF FAA PROHIBITS THE PAYMENT BY THE USG IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, OF COMPENSATION OR ALLOWANCES OF MORE THAN 85 INDIVIDUALS WHO ARE TCN'S. AN UNNECESSARILY NARROW INTERPRETATION WOULD CONCEIVABLY PROHIBIT US FROM USING ANY CONTRACTOR WITH TCN EMPLOYEES. THE EMBASSY, HOWEVER, DOES NOT BELIEVE THAT THE INTENT OF SECTION 656 WAS TO HAMSTRING TOTALLY OUR OPERATIONS OR PROGRAMS. RATHER IT SEEMS CLEAR THAT THE INTENT OF THE LEGISLATION WAS TO SET LIMITS ON U.S. INVOLVEMENT IN CAMBODIA BY DIRECT OR INDIRECT MEANS-TO PROHIBIT BY ANY MEANS, BY DIRECT HIRE, OR BY DEVIANT CONTRACTUAL DEVICES, ANY INCREASE IN PERSONNEL BEYOND 85 OVER WHICH THE USG HAS DIRECT CONTROL, WHOM THE GOVERNMENT CAN ORDER AT WILL TO PERFORM ANY REASONABLE FUNCTION--PERSONNEL WHO LOOK TO THE U.S. GOVERNMENT AS EMPLOYER. WE DO NOT VIEW SECTION 656 AS A PROHIBITION AGAINST OBTAINING ESSENTIAL SERVICES BY NON-PERSONAL SERVICES TYPE CONTRACTS (EVEN THOUGH THEY MAY INVOLVE TCN PERSONNEL). THE ESSENTIAL DIFFERENCE IS THAT WE HAVE NOT ENTERED INTO A CONTRACT WITH AN INDIVIDUAL, OVER WHOM WE HAVE CONTROL, BUT WITH A FIRM WILLING TO PROVIDE US WITH A SERVICE NECESSARY TO OUR OPERATION.

6. WHILE THE SEAAT CONTRACT IS THE CASE IN POINT, THERE ARE A NUMBER OF ONGOING CONTRACTS WHICH THE USG HAS ENTERED INTO WHERE IT IS ENTIRELY POSSIBLE THAT TCN'S ARE EMPLOYED. THESE INCLUDE, FOR EXAMPLE, THE HIRE BY AID AND MAP OF BARGES AND COASTERS OPERATING ON THE MEKONG FOR THE TRANSPORT OF GOOD INVOLVING THE USE OF TCN PERSONNEL. THE FIRMS WITH WHICH THE EMBASSY CONTRACTS FOR THE REPAIR OF TYPEWRITERS, COPY MACHINES, OR AIR CONDITIONERS MAY

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INCLUDE TCN'S ON THEIR EMPLOYEE ROSTERS. FRANKLY WE DO NOT KNOW. WE HAVE NEVER HERETOFORE THOUGHT TO QUESTION THE NATIONAL ORIGIN OF EVERY EMPLOYEE OF A CONTRACTOR FROM WHOM WE REQUIRE SERVICES. INDEED IT WOULD BE ADMINISTRATIVELY IMPOSSIBLE TO DO SO.

7. WE THEREFORE DO NOT BELIEVE IT ESSENTIAL OR DESIRABLE FROM A MANNER WHICH WOULD PRECLUDE OUR USE UNDER NON-PERSONAL SERVICES

CONTRACTS OF A FIRM SUCH AS SEAAT EMPLOYING TCN'S. IF DEPART-  
MENT CONCURS WITH OUR ANALYSIS, AND SO INFORMS US, WE WILL PROCEED  
TO NEGOTIATE THE SEAAT CONTRACT.  
DEAN

NOTE BY OC/T: NOT PASSED SECDEF.

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